

BARNES & THORNBURG

Richard W. Paulen
Email: rpaulen@btlaw.com



Bank One Building
Suite 200
121 West Franklin Street
Elkhart, Indiana 46516 U.S.A.
(574) 293-0681
(800) 821-0861
Fax (574) 296-2535

www.btlaw.com

May 2, 2003

Mr. Larry L. Johnson
U.S. Environmental Protection Agency
77 West Jackson - C-14J
Chicago, Illinois 60604

RE: Himco Dump Superfund Site

Dear Larry:

I attended the public meeting in Elkhart last week regarding the proposed amendment to the Himco Dump Superfund Site ROD. During our presentation Ms. Massenburg identified Mr. Himes and Himco as owners and operators of the facility. I would appreciate your reviewing the comments which Himco Waste-Away Services, Inc. filed at the time this site was originally nominated to the NPL in 1988. I've included copies of the relevant portions for your review. As you can see from the title work information in Mr. Taylor's affidavit, Mr. Himes owned only a small portion of the site which may never have been billed. Himco Waste-Away Services, Inc. never owned any portion of the site, Himco Waste-Away Services never operated the site. Himco Waste-Away Services, Inc. was incorporated in 1968 approximately half way through the life cycle of the site and operated as a transporter from that time until its closure.

As I am sure you can appreciate, in a small community such as Elkhart where Himco Waste-Away Services, Inc. competes head to head with industrial giants like Waste Management and BFI any inaccuracies in public statements by the EPA or any other government agencies can have a severe adverse affect on a company's business. While we have given up on having this site identified with a more appropriate name my clients did want to renew their objection to their being characterized as owners and operators of the site. (Additionally, it would be more accurate to refer to all of the owners or the larger owners when identifying the site.) If you have any indication that Himco Waste Away Services, Inc. owned or operated the site please forward it to me as it will affect their potential participation as matters move forward.

Thank you again for your continued concern with this matter.

Respectfully,

BARNES & THORNBURG

A handwritten signature in black ink, appearing to be 'R. Paulen'.

Richard W. Paulen

RWP/jj
Enclosures
ELDS01 RWP 150235v1

Richard W. Paulen

TWX 810-341-3427 B&T LAW IND
Telecopier (219) 296-2535

August 17, 1988

Mr. Stephen Lingle, Director
Hazardous Site Evaluation Division
(Attention: NPL Staff)
Office of Emergency and Remedial Response
(WH-548A)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Ms. Cathy K. Freeman
Region V
U.S. Environmental Protection Agency
5HR-11
230 South Dearborn Street
Chicago, IL 60604

Re: Comments of Himco Waste-Away Services, Inc.
on the National Priorities List, Update 7

Dear Mr. Lingle and Ms. Freeman:

This office represents Himco Waste-Away Services, Inc., an Indiana corporation. This letter and the accompanying enclosures will serve as Himco Waste-Away Services, Inc.'s comments concerning the proposed inclusion of the County Road 10 Landfill Site, or "Himco Dump Site" in Update 7 of the National Priorities List. (53 Fed.Reg 23988-23998) (June 24, 1988). The comments address three different issues, first the name of the site, secondly the specific information contained in the scoring package and finally, the presentation of additional information regarding the history of the site.

The first comment addresses the name of the site and constitutes a request by our clients to have the site redesignated as the County Road 10 Landfill Site. Our clients believe that this is not only a more accurate description but one which would treat our clients fairly and not impair their current ability to conduct their business in Elkhart County and the surrounding area. The comment itself sets forth the reasons for this request and we wish to reiterate at this point our request that the Environmental Protection Agency change the designation of this site.

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Secondly, multiple comments regarding the information contained in the HRS Scoring Package and other information provided by Environmental Protection Agency Region V in response to our Freedom of Information Act Requests address specific issues and discrepancies which our clients believe exist in that information.

Finally, we have provided, in the form of a comment, what we believe is an accurate history of the site as a landfill. This information was compiled with the assistance of Mr. Charles H. Himes, Jr., the son of the former operator.

We would request that the information contained in these comments receive the consideration of the Environmental Protection Agency in its deliberations regarding what sites will be added to the National Priorities List. We believe that after consideration of the information we are providing, particularly the information found in those comments addressing the HRS Scoring Package directly, the Environmental Protection Agency will determine that this site should not be placed on the National Priorities List. These comments will point out numerous problems with the scoring of the site and identify a number of practical considerations which militate against inclusion of the site on the National Priorities List. The activities of Ecology & Environment, Inc., the Environmental Protection Agency's representative in the site investigation are highly suspect from a technical standpoint and we do not believe they would withstand the scrutiny of a close investigation by the Environmental Protection Agency. All of the information provided by the Environmental Protection Agency, the State of Indiana and the Elkhart County Health Department in response to requests for information and used in preparation of these comments, indicates that both the city water and well water used by residents in the area are free from any contaminants which might be emanating from the County Road 10 Landfill Site. This information indicates that the site does not currently represent a hazard to the community or even to the very limited number of residential home owners immediately adjacent to the Landfill.

In summary, we believe that the investigation and preparation of the scoring of this site was inadequate to justify inclusion of the site on the National Priorities List. The multipal inconsistencies in the Hazardous Ranking System package and related materials and the many unanswered questions should by themselves preclude the inclusion of this site. We

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believe that in light of the information in the Hazardous Ranking System package and that provided with our comments it is evident that the site does not represent the major threat depicted in the narratives relating to the site. The site does not represent an imminent or even threatened danger to anyone. All residents living immediately adjacent to the site now have deep wells which provide acceptable drinking water. The Elkhart City Waster Works can supply city drinking water to almost everyone who could possibly be affected by the potential for contamination from the County Road 10 Landfill site. The mechanics of the scoring model paint a picture which is a substantially worse picture than the facts reveal ever existed. The County Road 10 Landfill does not represent an immediate danger to any one and should not be included on the National Priorities List.

If after reviewing these comments, the Environmental Protection Agency still believes the County Road 10 Landfill should be on the National Priorities List we believe that it's score should be that calculated pursuant to the Hazardous Ranking System Worksheets found at Tab 19. This scoring most accurately reflects the information presented by the package, even in it's questionable form.

If any of the comments accompanying this letter raise questions about which we can provide additional information to the Environmental Protection Agency we would appreciate your contacting the undersigned who will obtain that information and do anything that is possible to facilitate the review of this matter by the Environmental Protection Agency. Thank you for including these comments in the appropriate dockets. We urge the Environmental Protection Agency to give them careful consideration and again, on that basis to determine that the County Road 10 Landfill Site should not be included on the National Priorities List.

Respectfully yours,

BARNES & THORNBURG

Richard W. Paulen

RWP:ske
Enclosures
cc: Himco Waste-Away Services, Inc.

BARNES & THORNBURG

COMMENT NUMBER ONE
REQUEST THAT DESIGNATION OF SITE BE CHANGED

This site is located in Elkhart County, Indiana. The site is composed of at least three separately owned tracts of real estate, see Tab 8. These tracts have had multiple ownership from the time the site was first used to the present. Tract A has been owned for a majority of the time of the operation by Miles Laboratories, Inc., and Tract B by CLD Corporation. An Affidavit of Mr. Ronald Taylor, an employee of the Elkhart County Abstract Company, Inc., a licensed title insurance company located in the County, setting forth the ownership of these Tracts, as well as the ownership of Tract C, from 1960, a period before the Landfill was first operated to the present, is located at Tab 9.

As can be seen from these records, no portion of the Landfill was ever owned by HIMCO WASTE-AWAY SERVICES, INC. That Corporation, in fact, did not come into existence until December 22, 1968, some eight years after the Landfill was first operated, see Tab 10. After it's incorporation HIMCO WASTE-AWAY SERVICES, INC. was a transporter of various solid wastes to the site, but did not at any time own or operate the site.

HIMCO WASTE-AWAY SERVICES, INC. is the only corporate entity doing business in the State of Indiana and utilizing any form of the name "HIMCO". While the Landfill was started and

operated by Mr. Charles H. Himes, Sr., one of the incorporators and an early shareholder of HIMCO WASTE-AWAY SERVICES, INC., the Corporation did no more than transport and deposit solid waste at the site.

HIMCO WASTE-AWAY SERVICES, INC. is currently one of several industrial/commercial solid waste transporters conducting business in Elkhart County, Indiana and surrounding areas. The Corporation has received several inquiries regarding the C.R. 10 Landfill site and HIMCO WASTE-AWAY SERVICES, INC.'s relationship to the site since the original publication of newspaper articles regarding the nomination of the site to the National Priorities List. These inquiries have come from both current and prospective customers, and have, the Corporation believes, severely and adversely impacted the Corporation's economic viability. The nomination has created publicity for the site which will continue and increase in the future. If that publicity continues using HIMCO WASTE-AWAY SERVICES, INC.'s name, or any derivative thereof, the effect on the Corporation will be not only unfair but grossly out of proportion to the Corporation's involvement at the site and potentially disastrous to the Corporation's business. HIMCO WASTE-AWAY SERVICES, INC. believes that it would be more appropriate to designate the site as the "C.R. 10 Landfill, Elkhart County, Indiana". This designation clearly identifies the site geographically as it is the only current or former

Landfill on C.R. 10 in Elkhart County. Further, this designation does not single out one interested party where there were multiple owners of the real estate, one of whom, Miles Laboratories, Inc., was the major generator of waste, contributing more than seventy percent of the total volume of the fill deposited. While HIMCO WASTE-AWAY SERVICES, INC., as the primary transporter of the authorized solid waste deposited at the County Road 10 Landfill, may have been one of the most visible parties involved, it was surely not the most significant participant nor the only participant involved with the site. HIMCO WASTE-AWAY SERVICES, INC. was never the operator or owner of the site and it did not generate any of the wastes landfilled at the site. To name the site on the N.P.L. or in other agency activities or correspondence using the "HIMCO" name would therefore not only be manifestly unfair, but would also be inaccurate, create a false impression of the significance HIMCO WASTE-AWAY SERVICES, INC.'s activities at this site, and would have an adverse and potentially devastating economic effect on the Corporation. HIMCO WASTE-AWAY SERVICES, INC. therefore requests that the Environmental Protection Agency change the designation of this site to the County Road 10 Landfill, Elkhart Indiana.

0404P

COUNTY OF ELKHART)
)SS:
STATE OF INDIANA)

AFFIDAVIT

COMES NOW, Ronald Taylor being first duly sworn upon his oath deposes and says as follows:

1. That he is a resident of the County of Elkhart, State of Indiana, and has been for more than the last 30 years.

2. That he is now and has been for 16 years employed by the Elkhart County Abstract Company, Elkhart, Indiana, a corporation maintaining a general title business in Elkhart County.

3. That he is familiar with the tract books and other evidence of ownership of interest in real estate in Elkhart County and has made a survey of the ownership of the real estate comprising the location of the former C.R. 10 Landfill in Elkhart County.

4. That attached hereto are Exhibits "A" and "B" which are two diagrams showing the real estate interest in the area of the C.R. 10 Landfill.

5. That on August 8, 1956, Mr. & Mrs. Ira E. Rogers took title to that portion of the real estate designated as tracts 1, 2 and 3 on Exhibit "A".

6. That by Deed dated February 6, 1968, Mr. & Mrs. Rogers deeded the subject real estate, again identified as tracts 1, 2 and 3, to Josephine L. Cooper.

7. That on April 27, 1973, Josephine L. Cooper deeded the subject real estate to CLD Corporation which has owned the real estate identified as tracts 1, 2 and 3 from that time to the present.

8. That for more than ten (10) years prior to December 31, 1969, Henry Cohen and Mollie Cohen, husband and wife, owned that portion of the real estate designated as tract 26, on Exhibit B attached hereto.

9. That on December 31, 1969, Henry Cohen and Mollie Cohen sold that piece of property identified in Exhibit "B" as tract 26 to Miles Laboratories.

10. That with the exception of a transfer of One Hundred (100) feet from the Easterly boundary of said property by parallel lines to the City of Elkhart, Indiana, the property has remained through this date in the name of Miles Laboratories, Inc.

11. That on April 29, 1941, Mr. & Mrs. Elsworth J. Glick took title to that portion of the real estate identified as tracts 21, 22 and 23. That further, Mr. & Mrs. Glick took title to that portion of the real estate identified as tracts 29, 29A, 19 and 19A on October 2, 1948.

12. That on August 6, 1961, Mr. & Mrs. Glick sold the parcels identified as tracts 22, 23, 29 and 29A, on the attached Exhibit B to Charles H. Himes, Sr. and Grace A. Himes, husband and wife.

13. That on June 6, 1967, Mr. & Mrs. Glick sold to Mr. & Mrs. Himes that portion of the real estate designated as tract 21 in the attached Exhibit "B".

14. That on March 12, 1973, Mr. Harry B. Weiler and his wife Mabel G. Weiler conveyed to Charles H. Himes, Sr. and Grace A. Himes that real estate identified as tract 28 on the attached Exhibit "B".

15. That on January 27, 1973, Arthur L. Thornton and his wife Adelyn C. Thornton conveyed to Charles C. and Grace A. Himes, Sr. a portion of the real estate identified as tract 28A on Section B.

16. That on January 24, 1974, Charles C. and Grace A. Himes, Sr. deeded that tract identified as 28A on attached Exhibit "B" to the Indiana and Michigan Electric Company.

17. That on June 7, 1965, Mr. & Mrs. Thornton conveyed to Noble Bowers and Selma Bowers, husband and wife that tract of real estate identified as tract 27 in the attached Exhibit B.

18. That on September 24, 1976, Mr. & Mrs. Thornton deeded that portion of the real estate identified as

tracts 13, 27 and 30 to Mr. Charles C. and Grace A. Himes, Sr. as husband and wife.

19. That on June 23, 1976, Mr. & Mrs. Harry B. Weiler conveyed that property identified as tracts 13, 27 and 30 on the attached Exhibits "A" and "B" to Charles H. Himes, Sr. and Grace A. Himes, husband and wife.

20. That on July 1, 1977, Charles C. Himes and Grace A. Himes conveyed those tracts identified as 13, 27 and 30 on the attached Exhibit "A" to Noble Bowers and Selma Bowers, husband and wife.

21. That on July 10, 1984, Noble Bowers and Selma Bowers, husband and wife, conveyed those areas identified as tracts 11A, 13A, 27 and 30 to Alanzo Craft, Jr.

22. That on May 7, 1974, Charles C. Himes and Grace A. Himes, husband and wife conveyed One Hundred (100) feet off the East side of tracts 22, 23, and 29 to the City of Elkhart, Indiana.

23. That on December 21, 1983, Charles C. Himes and Grace A. Himes conveyed tracts 24 and 29 to Peter and Ruth Falcone, husband and wife.

24. That on September 16, 1985, Peter Falcone and Ruth Falcone, husband and wife conveyed tracts 22, 23, 28 and 29 to Alanzo Craft, Jr.

25. That your Affiant gives this Affidavit solely to identify the titleholders of record as they as appear

on the records of the Recorder of Elkhart County, Indiana for those periods of time from 1960 through 1976 for those portion of real estate identified in the attached Exhibits "A" and "B".

26. That at no time between 1960, and the present did HIMCO WASTE-AWAY SERVICES, INC. ever own any interest of record in any of the real estate referred to in this Affidavit.

27. That your Affiant makes no representations as to the environmental state of any of the tracts of real estate identified in this Affidavit nor does he attest to have any environmental knowledge or expertise.

Further your Affiant sayeth not.

This Affidavit dated this 22nd day of August, 1988.
Executed in Elkhart County, Indiana.

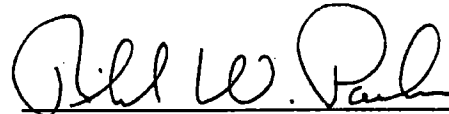
Ronald Taylor
Ronald Taylor

I affirm under the penalties for perjury that the foregoing representations are true and correct to the best of my knowledge.

Ronald Taylor
Ronald Taylor

STATE OF INDIANA)
)SS:
COUNTY OF ELKHART)

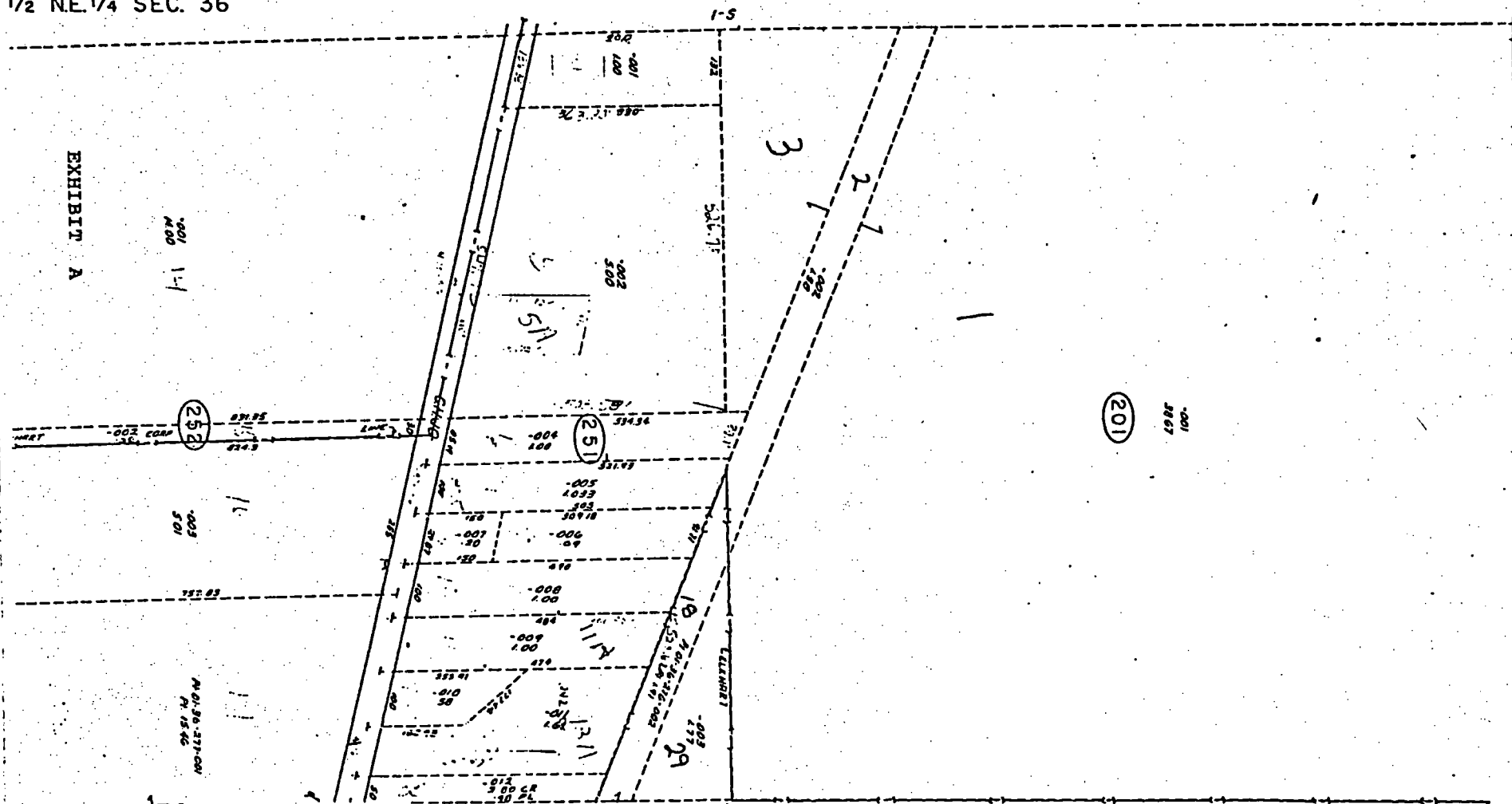
Before me the undersigned, a Notary Public for Elkhart County, State of Indiana, personally appeared Ronald Taylor and acknowledged the execution of the foregoing instrument this 22nd day of August, 1988.


Richard W. Paulen

0406P

CLEVELAND
1/2 NE 1/4 SEC. 36

EXHIBIT A



TWP 20N R 1E

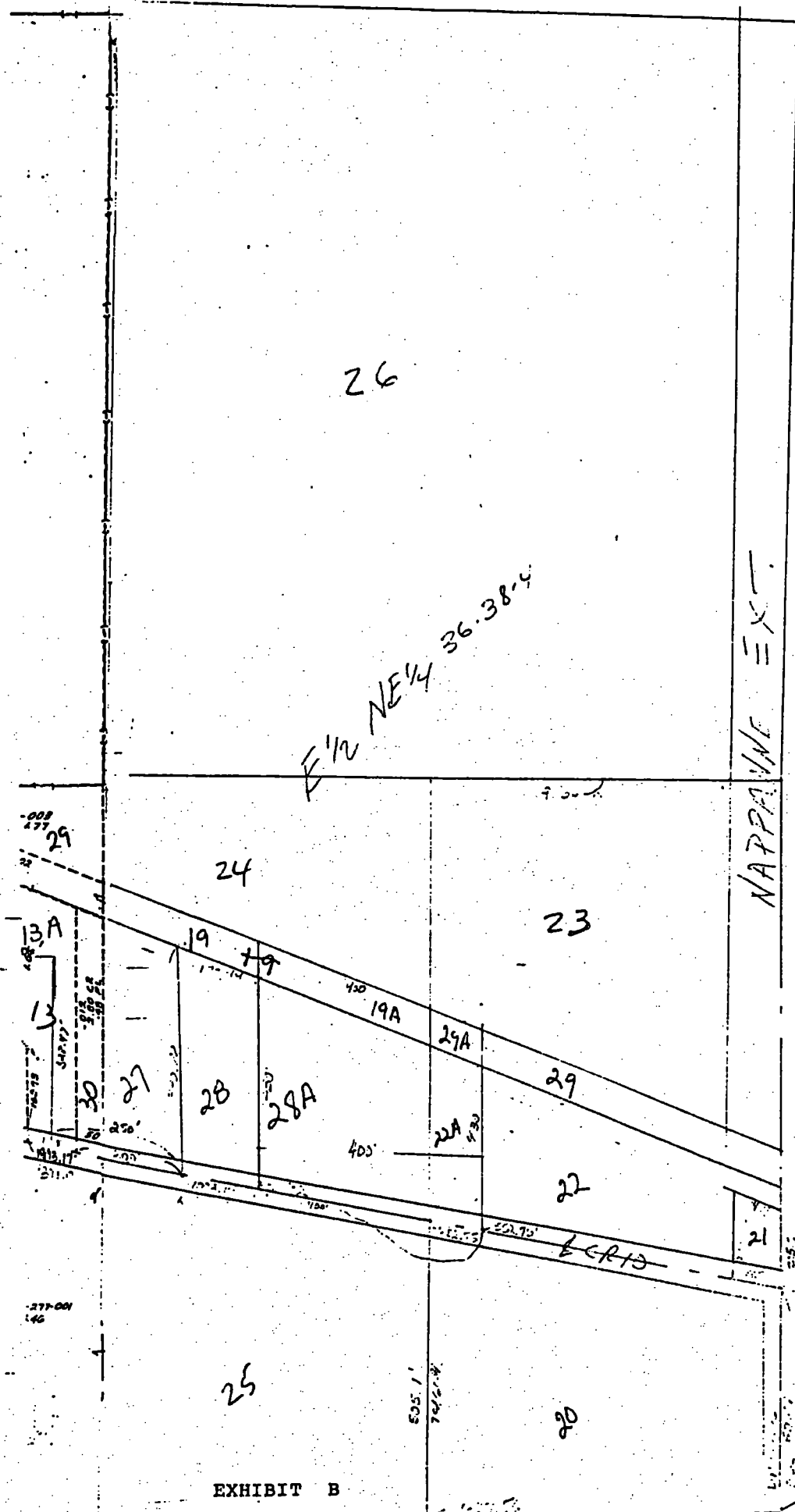


EXHIBIT B

There are 2 Acres "29"



1/4 Sec 14, 1/4 Sec 34, 1/4 Sec 35



STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

6812-466

CERTIFICATE OF INCORPORATION

OF

KUMCO WASH-AWAY SERVICE, INC.

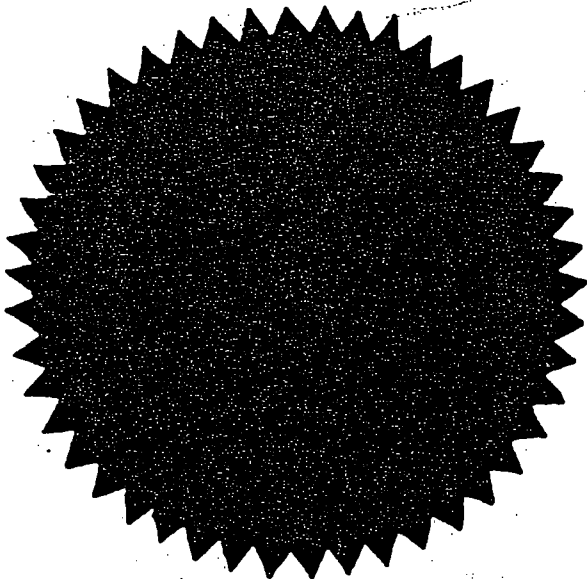
I, WILLIAM N. SALIN, Secretary of State of the State of Indiana, hereby certify that Articles of Incorporation of the above Corporation, in the form prescribed by my office, prepared and signed in triplicate by the incorporator, or incorporators, and acknowledged and verified by the same before a Notary Public, have been presented to me at my office accompanied by the fees prescribed by law; that I have found such Articles conform to law; that I have endorsed my approval upon the triplicate copies of such Articles; that all fees have been paid as required by law; that one copy of such Articles has been filed in my office; and that two copies of such Articles bearing the endorsement of my approval and filing have been returned by me to the incorporators or their representatives; all as prescribed by the provisions of the Indiana General Corporation Act, as amended.

Wherefore, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence has begun.

In Witness Whereof, I have hereunto set my hand and affixed
the seal of the State of Indiana, at the City of Indianapolis,
this 27th day of
December 68
19.....

WILLIAM N. SALIN, Secretary of State.

By..... Deputy



U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAY 07 2003

OFFICE OF REGIONAL
COUNSEL